

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of) File Number: EB-09-SD-0152
)
DTG Operations Inc. d/b/a Dollar Rent-A-Car) NAL/Acct. No.: 201132940001
)
San Diego, California) FRN: 0019529643

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 9, 2010

Released: December 10, 2010

By the District Director, San Diego District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that DTG Operations Inc., d/b/a Dollar Rent-A-Car (“Dollar”), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended, (“Communications Act” or “Act”)¹ and Section 1.903(a) of the Commission’s Rules (“Rules”)² by operating a land mobile station in San Diego, California without the requisite Commission authorization. We conclude that Dollar is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On December 11, 2009, in response to complaints from the Federal Aviation Administration (“FAA”) of intermittent interference to three ground control frequencies used by air traffic controllers at the San Diego International Airport, agents from the Enforcement Bureau’s San Diego Office (“San Diego Office”) used direction-finding techniques to locate the source of the interference to spurious signals emitted from a Dollar transmitter on an airport shuttle bus.

3. On December 14, 2009, agents from the San Diego Office used direction-finding techniques to locate the source of the spurious signals to a land mobile radio operating on the frequency 452.250 MHz.³ The agents heard very brief conversations on 452.250 MHz which appeared to refer to the arrivals and departures from “terminal one” or “terminal two.” These transmissions lasted only one or two seconds. The agents also observed that Dollar had four shuttle buses in operation that day and the interference coincided with the activity on Dollar’s shuttle bus #28.

¹ 47 U.S.C. § 301. .

² 47 C.F.R. § 1.903(a).

³ The agents noted that multiple transmitters on 452.250 MHz were in use but determined that only one appeared to be generating the spurious signals.

4. Also, on December 14, 2009, before conducting an inspection of the Dollar land mobile radio system, the agents reviewed the Commission's records. While the agents found numerous licenses issued to other Dollar locations for various radio frequencies, they found no licenses issued to Dollar to operate on 452.250 MHz in San Diego. The agents then returned to Dollar's office at 2499 Pacific Highway, San Diego, California and conducted an inspection of Dollar's land mobile radio system. The local manager of the Dollar facility did not have documentation of any FCC authorization to use frequency 452.250 MHz. Upon notification by the agents of the interference to the ground control frequencies at nearby San Diego International Airport, the Dollar manager had the radio transmitter removed from shuttle bus #28 and no further interference has been reported.

5. On January 12, 2010, the San Diego Office issued a *Letter of Inquiry* to Dollar.⁴ On March 10, 2010, the San Diego Office received a reply to the *LOI* from Dollar's senior maintenance manager.⁵ In its *LOI Response*, Dollar stated that it did not have authorization to operate on 452.250 MHz in San Diego. Dollar also provided a copy of an FCC Industrial/Business radio station authorization, WQLJ666, granted by the Commission on February 16, 2010, for operation on 463.450 MHz and 463.7375 MHz. Dollar also stated that its radios were installed by a local radio company in 1998, and had been in use on 452.250 MHz since that time.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁶ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁷ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁸

7. Section 301 of the Act states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."⁹ Section 1.903(a) of the Rules states that "[s]tatements in the Wireless Radio Services must be used and operated only in accordance

⁴ See *Letter of Inquiry* from William R. Zears, Jr., District Director, San Diego Office, Western Region, Enforcement Bureau, to Dollar Rent-A-Car, dated January 11, 2010 ("*LOI*").

⁵ See Letter from James S. Anderson, Maintenance Manager, DTG Operations, Inc., to William R. Zears, Jr., District Director, San Diego Office, Western Region, Enforcement Bureau, dated March 10, 2010 ("*LOI Response*").

⁶ 47 U.S.C. § 503(b).

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁸ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁹ 47 U.S.C. § 301.

with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission¹⁰ On December 11, 2009 and December 14, 2009, agents from the San Diego Office determined that an unlicensed land mobile radio system was operating on the frequency 452.250 MHz from a Dollar airport shuttle bus. Dollar admitted that it did not have an FCC authorization to operate on 452.250 MHz in the San Diego area. The violation was repeated because it occurred on more than one day.¹¹ The violation was willful because Dollar consciously and deliberately used its land mobile radios on the frequency 452.250 MHz without the requisite Commission authorization.¹² Based on the evidence before us, we find that Dollar apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules.

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation of a station without an instrument of authorization is \$10,000.¹³ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁴ Dollar admitted that its unlicensed operation on 452.250 MHz had been ongoing since 1998. While earlier precedent might suggest a lower forfeiture amount,¹⁵ we note that the unlicensed operation was ongoing for 11 years and that it posed significant public safety risks given the interference to FAA ground control frequencies. Considering the totality of the evidence, and given the duration of the unauthorized operation and the gravity of the public safety risks posed by the operation, we find that no downward adjustment of the base forfeiture of \$10,000 is warranted and that an upward adjustment is warranted. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Dollar is apparently liable for a forfeiture in the amount of \$12,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, DTG Operations Inc., d/b/a Dollar Rent-A-Car, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for apparently willfully and repeatedly violating Section 301 of the Act and Section 1.903(a) of the Rules.¹⁶

¹⁰ 47 C.F.R. § 1.903(a).

¹¹ See *supra* n.8.

¹² See *supra* n.7.

¹³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ See e.g., *Gateway Security Systems, Inc.*, Forfeiture Order, 18 FCC Rcd 24026 (EB 2003) (unlicensed operation was not analogous to the intentional unlicensed operation of a "pirate" station operator who operates its station in flagrant violation of Commission rules).

¹⁶ 47 U.S.C. §§ 503(b), 301; 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 1.903(a).

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, DTG Operations Inc., d/b/a Dollar Rent-A-Car, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁷ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Dollar shall also send electronic notification to WR-Response@fcc.gov on the date said payment is made.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, California, 92111, and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall also be emailed to WR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by both regular mail and Certified Mail, Return Receipt Requested to DTG Operations Inc., d/b/a Dollar Rent-A-Car, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears, Jr.
District Director
San Diego District Office
Western Region
Enforcement Bureau

¹⁷ See 47 C.F.R. § 1.1914.